

REMARKS

Claims 11 to 15 and 18 to 24 are currently pending and being considered in the present application.

Reconsideration is respectfully requested based on the following.

Claims 11 to 16, 19 and 20 were rejected under 35 U.S.C. 103(a) as unpatentable over Yuda et al., U.S. Patent Application No. 2002/0049534 ("Yuda") reference, in view of U.S. Application No. 6,223,125 to Hall. ("Hall").

As to claim 16, it was previously canceled without prejudice.

To reject a claim under 35 U.S.C. § 103(a), the Office bears the initial burden of presenting a *prima facie* case of obviousness. *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). To establish *prima facie* obviousness, three criteria must be satisfied. First, there must be some suggestion or motivation to modify or combine reference teachings. *In re Fine*, 837 F.2d 1071, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). This teaching or suggestion to make the claimed combination must be found in the prior art and not based on the application disclosure. *In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991).

Also, as clearly indicated by the Supreme Court in *KSR*, it is "important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the [prior art] elements" in the manner claimed. *See KSR Int'l Co. v. Teleflex, Inc.*, 127 S. Ct. 1727 (2007). In this regard, the Supreme Court further noted that "rejections on obviousness cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.*, at 1396. Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 U.S.P.Q. 375 (Fed. Cir. 1986). Third, the prior art reference(s) must teach or suggest all of the claim features. *In re Royka*, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974).

Still further, to reject a claim as obvious under 35 U.S.C. § 103, the prior art must disclose or suggest each claim feature and it must also provide a motivation or suggestion for combining the features in the manner contemplated by the claim. (See Northern Telecom,

Inc. v. Datapoint Corp., 908 F.2d 931, 934 (Fed. Cir. 1990), cert. denied, 111 S. Ct. 296 (1990); In re Bond, 910 F.2d 831, 834 (Fed. Cir. 1990)). Thus, the “problem confronted by the inventor must be considered in determining whether it would have been obvious to combine the references in order to solve the problem,” Diversitech Corp. v. Century Steps, Inc., 850 F.2d 675, 679 (Fed. Cir. 1998).

The Yuda reference concerns an apparatus for navigating a moving object for easing the action of an operator of the moving object. The apparatus has a map data acquiring section, a current position data acquiring section, an optimum route searching section for calculating an optimum route data from the map data, a forward map data acquiring section for generating a forward map data from the current position data and the optimum route data, a route navigation symbol data drawing section for generating a route navigation symbol image from the forward map data, and a stereoscopic image displaying section for displaying a three-dimensional form of the route navigation symbol image. (See Yuda Abstract).

Accordingly, the Yuda reference does not disclose or suggest the feature of a “*guide object* along the calculated travel route being displayed in relation to a traffic route, whereby the *movement of the guide object represents driving maneuvers to be performed*”, as provided for in the context of the presently claimed subject matter.

In this regard, the Specification of the present application specifically discloses (in view of which the claims must be interpreted) “that the driver merely needs to follow along and emulate the appropriate driving maneuvers. Thus, the *need for converting symbolic, optical displays or acoustic instructions into an active driving maneuver, is eliminated.*” (Specification, page 1, lines 30 to 31, to page 2, lines 1 to 3 (emphasis added)).

Any review of the Yuda reference makes clear that it does not disclose or suggest a *guide object* in which its movement represents *driving maneuvers to be performed* by a driver, as provided for in the context of the presently claimed subject matter. In fact, the cited section relied upon by the Final Office Action merely discusses a symbol to be generated when decisions need to be made, not a guide object to emulate its movements, since it specifically states as follows:

As the vehicle arrives *N meters before the crossroads for turning to left or right*, the route navigation symbol data generating section 23 generates a route navigation symbol data including a symbol model information for displaying “a model with blinkers and brake-lamps” and a route direction identification display information for displaying “*blinker flashing*” ... in response to the route direction data for the forward map data, indicating the direction ...

(Yuda, paragraph [0079], emphasis added).

Accordingly, the Yuda reference merely refers to a *symbol representing the vehicle to be generated when decisions need to be made* (i.e., when the vehicle N meters before the crossroads). The symbol merely indicates, given your current position, whether to turn left or right by blinkers on a symbol model representing the vehicle. In stark contrast to the claimed subject matter, but the driver still needs to *convert the symbolic, optical displays and instructions into an active driving maneuver*.

For example, there is a difference between being told where to turn and following another vehicle (represented by the guide object). Thus, even if the Yuda reference informs a driver whether to turn left or right by turn-signals when decisions need to be made, this does not disclose nor suggest a *guide object representing driving maneuvers to be performed* that the driver merely needs to *follow along and emulate*, as provided in the context of the claimed subject matter (and as explained in the specification).

Furthermore, Yuda does not describe or even suggest the feature of adaptively controlling the movement of the guide object *depending on the traffic situation*. In particular, a movement of the navigation symbol image with a car model, if any, depends entirely upon the *current location of the vehicle itself*. As explained above, to activate the navigation symbol image 50 of Yuda, the vehicle itself must have arrived at a certain location. (Yuda, paragraphs [0079], [0081]). Even if Yuda did refer to activation of an image of a car model in accordance with the location of the vehicle, this does not describe or suggest an arrangement for adaptively controlling the movement of the guide object *depending on the traffic information* determined by sensing other vehicles in an area surrounding the guided vehicle, as provided for in the context of the claimed subject matter.

As to the secondary Breed reference, it does not cure – and it is not asserted to cure -- this critical deficiency.

Prior art references must be considered as a whole, including portions that teach away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540 (Fed. Cir. 1983). Furthermore, *prima facie* obviousness cannot be established based on a modification of a reference that destroys the intent, purpose, or function of the invention disclosed in the reference, since there is no suggestion or motivation to make the proposed modification. *See In re Gordon*, 733 F.2d 900, 221 U.S.P.Q. 1125 (Fed. Cir. 1984). The Breed reference specifically teaches away from the claimed subject matter since it

specifically requires communication between vehicles. In this regard, the Breed reference states as follows:

[For] the vehicle control system to function without error, certain types of information *must be accurately provided*. These include information permitting the vehicle to determine its absolute location and *means for vehicles near each other to communicate this location information to each other. ...Also, critical weather or road-condition information is necessary.*

(Breed, paragraph [0026] (emphasis added)).

In this regard, the Yuda reference does not require communication *between vehicles nor road-condition information*. The Breed reference teaches away from systems that do not necessitate or require communication between vehicles and road-condition information. For at least this reason it would not be obvious to combine Yuda and Breed references, as conclusorily asserted by the Final Office Action.

Accordingly, claim 11 is allowable, as are its dependent claims 12 to 15 and 18 to 20.

Claims 17 and 18 were rejected under 35 U.S.C. 103(a) as unpatentable over Yuda the reference, in view of the Breed reference, in further view of U.S. Application No. 6,223,125 to Hall. ("Hall"). *It also appears that claims 22 to 24 were rejected, but they are not listed in the summary rejection on page 4 of the Final Office Action.*

As to claim 17, it was previously canceled without prejudice.

The Hall reference refers to a Collision Avoidance System that prevents collisions between vehicles and vehicular collisions with pedestrians, trains, and stationary objects by monitoring, controlling, documenting, and reporting the speed and position of vehicles. The system guards against speeding violations, moving violations, and particular safety hazards by invoking a reduction of vehicle speed or by restricting vehicle movement to control its position. This is primarily accomplished with the activation of a controllable road perturbation. The system also monitors pedestrians, school bus loading/unloading, traffic density, trains, environmental conditions that may affect driving, and traffic control systems to determine the action to take for collision prevention.

The capability to monitor various parameters that may indicate an impending collision or detect parameters that indicate that conditions are more favorable for a collision allows the

system to monitor an entire traffic environment to anticipate and thus prevent those collisions. The system integrates and synchronizes with existing traffic control devices and systems to ensure that it reinforces the traffic laws and safety intent of the environment in which it is installed. Sensors detect the status of objects within the traffic environment including the location and speed of vehicles. (Hall, Abstract).

Accordingly, the Hall reference does not disclose nor suggest any of the features described above as to claims 18, 22 and 23, which depend from claim 11, and does not disclose nor suggest that the deficiencies of Yuda should be remedied or changed in any way to provide the claimed subject matter.

Claims 18, 22 and 23 are therefore allowable for essentially the same reasons as claim 11, since they depend from claim 11 and since the secondary Hall reference does not cure – and is not asserted to cure – the deficiencies of the primary reference. Claim 17 was previously canceled.

Regarding independent claim 24, it includes features like those of claim 11 and is, therefore, allowable for essentially the same reasons as claim 11.

As further regards claim 24, it includes the further feature of an arrangement “to determine an actual highest permissible speed at a location, in which the highest permissible speed is used to influence a velocity of the guide object so that it does to move more rapidly along the travel route than is allowed by the highest permissible speed at the location, so that the driver is deterred from exceeding the highest permissible speed.” Neither the Yuda nor the Hall references disclose, nor suggest, this feature.

The Final Office Action concedes this critical deficiency but conclusorily asserts that “[a]lthough Hall is mostly geared toward determining collision situations, it would have been obvious to one having ordinary skill in the art at the time of the invention to include the monitoring around the vehicle for other vehicles and vehicle speeds in order to determine the traffic around the vehicle and further determine if steps needed to be taken to change the route.” (Final Office Action, page 5).

It is respectfully submitted that the Federal Circuit in the case of In re Kotzab has made plain that even if a claim concerns a “technologically simple concept” — which is not the case here — there still must be some finding as to the “specific understanding or principle within the knowledge of a skilled artisan” that would motivate a person having no knowledge of the claimed subject matter to “make the combination in the manner claimed,” stating that:

In this case, the Examiner and the Board fell into the hindsight trap. The idea of a single sensor controlling multiple valves, as opposed to multiple sensors controlling multiple valves, is a technologically simple concept. With this simple concept in mind, the Patent and Trademark Office found prior art statements that in the abstract appeared to suggest the claimed limitation. But, there was no finding as to the specific understanding or principle within the knowledge of a skilled artisan that would have motivated one with no knowledge of Kotzab's invention to make the combination in the manner claimed. In light of our holding of the absence of a motivation to combine the teachings in Evans, we conclude that the Board did not make out a proper *prima facie* case of obviousness in rejecting [the] claims . . . under 35 U.S.C. Section 103(a) over Evans.

In re Kotzab, 55 U.S.P.Q.2d 1313, 1318 (Fed. Cir. 2000) (emphasis added). Here again, there have been no such findings to establish that the features discussed above of the rejected claims are met by the reference relied upon. As referred to above, any review of the reference, whether taken alone or combined, makes plain that it simply does not describe the features discussed above of the rejected claims.

Claim 24 is therefore allowable.

To the extent that the Office maintains the obviousness rejection, it is respectfully requested, in accordance with MPEP § 2144.03(C) and 37 CFR § 1.104(d) (2), that an Examiner's affidavit should be provided to support the obviousness rejections as to the asserted steps (or items) that were present within the art at the time of the presently claimed subject matter. In particular, it is respectfully requested pursuant to 37 C.F.R. § 1.104(d)(2) that the Examiner provide an affidavit and/or that the Examiner provide published information concerning these assertions. This is because the rejection is apparently based on assertions that draw on facts within the personal knowledge of the Examiner, since no support was provided for these otherwise conclusory and unsupported assertions.

Accordingly, it is submitted that claims 11 to 15 and 18 to 24 are allowable.

CONCLUSION

It is therefore respectfully submitted that all of the presently pending claims are allowable. It is therefore respectfully requested that the rejections and objections be withdrawn, since all issues raised have been addressed and obviated. An early and favorable action on the merits is therefore respectfully requested.

Respectfully submitted,

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